

Court of Appeals, State of Michigan

ORDER

Applewood Orchards Inc v Wilbur-Ellis Company

Docket No. 297361

LC No. 08-002992-NO

Douglas B. Shapiro
Presiding Judge

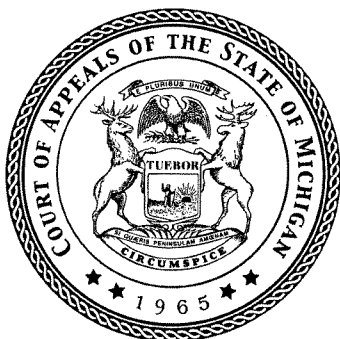
William B. Murphy, C.J.

Richard A. Bandstra
Judge

The Court orders that the motion for immediate consideration is GRANTED.

The Court orders pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court orders that the February 22, 2010 decision of the trial court is PEREMPTORILY REVERSED and its March 17, 2010 order effectuating that ruling is VACATED. The trial court clearly erred when it viewed the packet as one form and not as three separate sales receipts, with each separate receipt intended to be torn from the packet and given to three separate parties. The order ticket packet is nothing more than a standard receipt form. The reverse side of each of the receipts intended for distribution to a contracting party, i.e., merchant and customer, has on its reverse side the additional terms and conditions that are intended to bind the parties. This matter is REMANDED for reassignment to a different judge to handle this matter generally, not just with respect to the reconsideration of defendant's motion for summary disposition. This order is not to be construed as a decision with regard to whether any disclaimers on the individual receipts are conspicuous. MCL 440.2316(2). This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Shapiro, J., would affirm the denial of summary disposition on the grounds that whether the disclaimers were conspicuous was a disputed question of fact, but direct the trial court that the proffered defense was not frivolous and should be given full consideration on the ultimate issue of conspicuity.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY - 5 2010

Date

Sandra Schultz Mengel
Chief Clerk